



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2013-0760; FRL-9905-12-Region 4]**

**Approval and Promulgation of Implementation Plans; State of Florida**

**New Source Review - Prevention of Significant Deterioration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), Division of Air Resources Management, to EPA on December 19, 2013. The SIP revision modifies FDEP's New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting regulations to provide FDEP with the authority to issue PSD permits governing greenhouse gas (GHG) emissions, to establish appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Florida's PSD permitting requirements for their GHG emissions, and to provide for the implementation of GHG Plantwide Applicability Limits (PALs) on a CO<sub>2</sub>e basis. EPA is proposing approval of Florida's December 19, 2013, SIP revision because the Agency has determined that the SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding the PSD permitting program. EPA also is proposing that upon final approval of the December 19, 2013, SIP revision, EPA will rescind the GHG PSD Federal Implementation Plan (FIP) for Florida that was put in place to ensure the availability of a permitting authority for GHGs in Florida.

**DATES:** Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0760 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [R4-RDS@epa.gov](mailto:R4-RDS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2013-0760, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.  
  
Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2013-0760." EPA's policy is that all comments received will be included in the public docket without change and

may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding NSR and GHG permitting, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9214; email address: [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. What Action is EPA Proposing?**
- II. What is the Background for EPA's Proposed Action?**

### **III. What is EPA’s Analysis of Florida’s SIP Revision?**

### **IV. Proposed Actions**

### **V. Statutory and Executive Order Reviews**

#### **I. What Action is EPA Proposing?**

On December 19, 2013, FDEP submitted a SIP revision to EPA for approval into the Florida SIP to adopt rules equivalent to Federal requirements for NSR PSD permitting. The SIP revision consists of changes to the FDEP Air Quality Regulations, at Chapter 62-210, Florida Administrative Code (F.A.C.), *Stationary Sources – General Requirements, Section 200 – Definitions (rule 62-210.200)*. The December 19, 2013, SIP revision changes the definition of “PSD pollutant” to provide Florida with the authority to regulate GHGs<sup>1</sup> under its PSD program as well as to establish the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to the State’s PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule, 75 FR 31514 (June 3, 2010).<sup>2</sup> Florida’s December 19, 2013, submission also incorporates by reference<sup>3</sup> (IBR) the GHG PAL

---

<sup>1</sup> Throughout this document, where appropriate, EPA will use the acronyms “GHG” and “GHGs” to express the term greenhouse gas or greenhouse gases, respectively.

<sup>2</sup> “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.” 75 FR 31514 (June 3, 2010) (GHG Tailoring Rule)

<sup>3</sup> Throughout this rulemaking the acronym IBR means “incorporate by reference” or “incorporates by reference.”

provisions that were promulgated in EPA's July 12, 2012, Step 3 GHG Tailoring Rule.<sup>4</sup> In addition, EPA is proposing that upon final approval of the December 19, 2013, SIP revision, EPA will rescind the GHG PSD FIP for Florida that was put in place to ensure the availability of a permitting authority for GHGs in Florida. *See* 75 FR 82246 (December 30, 2010). For more information on Florida's FIP see section III of this rulemaking. EPA's proposed approval of Florida's December 19, 2013, SIP revision includes approval of the GHG PSD Permit Transition Plan described in section IV.D. of this rulemaking. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Florida SIP.<sup>5</sup>

## **II. What is the Background for EPA's Proposed Action?**

This section briefly summarizes EPA's GHG-related actions that provide the background for this action. Please see the preambles for the identified GHG-related rulemakings for more information.

### **A. EPA's GHG Tailoring Rule, SIP Call, and FIP.**

Beginning in 2010, EPA promulgated a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, established the overall framework for today's proposed action on the Florida SIP. Four of these actions include, as they

---

<sup>4</sup> "Prevention of Significant Deterioration and Title V Operating Permit Greenhouse Gas (GHG) Tailoring Rule Step 3 and GHG Plantwide Applicability Limits." 77 FR 41051 (July 12, 2012) (Step 3 GHG Tailoring Rule).

<sup>5</sup> EPA also promulgated the GHG Tailoring Rule for the title V operating permit program in the rulemaking entitled "Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule," 75 FR 82254 (December 30, 2010). However, today's action does not affect Florida's title V program.

are commonly called, the “Endangerment Finding” and “Cause or Contribute Finding,” (which EPA issued in a single final action);<sup>6</sup> the “Johnson Memo Reconsideration;”<sup>7</sup> the “Light-Duty Vehicle Rule;”<sup>8</sup> and the GHG Tailoring Rule. Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the GHG Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the GHG Tailoring Rule, EPA tailored the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA to relieve overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514 (June 3, 2010). As EPA explained in the GHG Tailoring Rule, the threshold limitations are necessary because without them PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year as of January 2, 2011. January 2, 2011, was the date when EPA’s Light-Duty

---

<sup>4</sup> “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” 74 FR 66496 (December 15, 2009).

<sup>5</sup> “Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

<sup>6</sup> “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

Vehicle Rule took effect, imposing control requirements for the first time on carbon dioxide and other GHGs.

In the GHG Tailoring Rule, EPA requested that permitting authorities confirm whether their SIPs provide authority to implement the GHG Tailoring Rule thresholds. *See* 75 FR at 31582. FDEP provided a letter (commonly referred to as the 60-day letter) to EPA on July 2, 2010, explaining: “[F]lorida’s PSD permitting program is limited to those pollutants identified in our state rules as, ‘*PSD pollutant*,’ a term that does not include GHGs. In order to incorporate GHGs into our PSD permitting program, we will need to amend our state rules and submit a SIP revision to EPA.” *See* Docket ID: EPA-R04-OAR-2013-0760 for a copy Florida’s 60-day letter.

On September 2, 2010, EPA issued proposed findings of substantial inadequacy<sup>9</sup> and a proposed “SIP call” for Florida and other states with SIP-approved PSD programs that did not apply PSD to GHGs. *See* 75 FR 53883. The purpose of the SIP call was to require these states to revise their SIPs by a specific deadline to ensure that their PSD program covered GHG-emitting sources. In the proposed SIP call, EPA requested that each SIP call state confirm to EPA that its SIP did not apply the PSD program to GHGs. *Id.* at 53896. EPA further requested that each SIP call state identify the deadline that they would accept for submitting their corrective SIP revision. *Id.* In response, FDEP submitted a letter (referred to as the 30-day letter) to EPA on October 1, 2010, reiterating that Florida’s SIP did not apply PSD permitting

---

<sup>9</sup> When Federal permitting requirements change, as they did when EPA’s GHG emissions standards for light-duty vehicles took effect on January 2011, states may need to modify their SIPs to meet the new requirements. Assuring that each state and local permitting agency has the authority to permit GHGs requires SIP changes in a number of states. In the final SIP call rule, EPA found that PSD permitting regulations in 15 state and local permitting agencies states do not meet CAA requirements because their programs at the time did not cover GHG emissions. In these states, at the time of the GHG SIP call, neither EPA nor the state had authority to issue a PSD permit to sources of GHG emissions.



requirements to sources of GHG. *See* 75 FR 53883. Florida explained that PSD permitting applicability in the State was established based on the application of the terms “*PSD pollutant*,” “*major stationary source*,” “*major modification*” and “*significant emission rates*” (the key term being “*PSD pollutant*”). The definition of “*PSD pollutant*” is limited by a state rule to a finite set of pollutants which did not include GHG. Florida also indicated it did not oppose the SIP call’s establishment of a December 22, 2013, deadline to submit a corrective SIP revision. *See* Docket ID: EPA-R04-OAR-2013-0760 for Florida’s 30-day letter.

In December 2010, EPA promulgated additional rulemakings to implement the new GHG PSD SIP program. Recognizing that some states had SIP-approved PSD programs that did not apply PSD to GHGs, EPA finalized the findings of substantial inadequacy and GHG SIP call<sup>10</sup> for Florida and 14 other state and local permitting authorities where the existing SIP-approved PSD program did not provide authority to regulate GHGs. The SIP call required the 15 state and local permitting authorities to revise their SIPs by a specific deadline to ensure that their PSD program covered GHG emitting sources. In the SIP call, EPA explained that if a state identified in the SIP call failed to submit the required corrective SIP revision by the applicable deadline, the Agency would promulgate a FIP under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHGs.

FDEP, along with several other state and local permitting authorities, did not submit a corrective SIP revision to apply its PSD program to sources of GHG by the specified deadline

---

<sup>10</sup> “Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,” Final Rule.” 75 FR 77698 (December 13, 2010) (GHG SIP call).

cited in the SIP call. Therefore on December 29, 2010,<sup>11</sup> EPA published a finding of failure to submit the required SIP revision by the specified deadline and then promulgated the GHG PSD FIP.<sup>12</sup> EPA explained in the SIP call and GHG PSD FIP that the purpose of the two rulemakings and their expedited schedules was to ensure that GHG-emitting sources in the affected states, including Florida, would have a permitting authority (i.e., EPA) to act on the GHG PSD permit applications by January 2, 2011 (date that GHGs became subject to PSD). EPA also emphasized that its “overarching goal is to assure that in every instance, it will be the state that will be the permitting authority,” and that as a result, EPA sought to return permitting authority to the states as soon as possible. *See* 75 FR at 77717.

## **B. Step 3 GHG Tailoring Rule**

In the June 3, 2010, GHG Tailoring Rule, EPA established a phased-in approach to implementing CAA permitting requirements to regulate GHG-emitting sources through the PSD program (referred to as Steps 1 and 2). *See* 75 FR 31514. Step 1,<sup>13</sup> which took effect on January

---

<sup>11</sup> “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,” 75 FR 81874 (December 29, 2010).

<sup>12</sup> “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,” 75 FR 82246 (December 30, 2010) (GHG PSD FIP).

<sup>13</sup> Under Step 1 of the Tailoring Rule, PSD requirements apply to sources’ GHG emissions if the sources were subject to PSD anyway due to their non-GHG regulated air pollutants (“anyway” sources) and emit or have the potential to emit at least 75,000 tons per year (tpy) (not defined until the next page) CO<sub>2</sub>e not defined until the next page. For title V, existing sources with, or new sources obtaining, title V permits are required to address GHG emissions in those permits as necessary.

2, 2011; and Step 2,<sup>14</sup> which took effect on July 1, 2012, and incorporated Step 1, established the PSD and title V applicability thresholds at what EPA calls the 100,000/75,000 levels, which refers to the number of tons per year (tpy) in carbon dioxide equivalent (CO<sub>2</sub>e)<sup>15</sup> basis. Also in the GHG Tailoring Rule, EPA made regulatory commitments for a subsequent action (or Step 3) to propose or solicit comment on lowering the 100,000/75,000 threshold on the basis of three criteria that concerned whether the permitting authorities had the necessary time to develop greater administrative capacity due to an increase in resources or permitting experience, as well as whether the EPA and the permitting authorities had developed effective strategies to streamline the issuance of permits. However, after assessing the progress of GHG permitting, EPA determined that the three criteria mentioned above had not been met because neither the Agency nor the states have made sufficient progress developing sufficient capacity or streamlining mechanisms to handle a larger number of permits than Steps 1 and 2 require. As a result, on July 12, 2012, EPA finalized the Step 3 GHG Tailoring Rule<sup>16</sup> determining not to

---

<sup>14</sup> Under Step 2, PSD applies to the largest GHG-emitting sources that are not “anyway” sources and that are either new sources that emit or have the potential to emit at least 100,000 tpy CO<sub>2</sub>e or existing sources that emit at that level and that undertake modifications that increase emissions by at least 75,000 tpy CO<sub>2</sub>e, and also emit at least 100/250 tpy of GHGs on a mass basis. In addition, under Step 2, title V applies to existing sources that are not “anyway” sources that emit or have the potential to emit 100,000 tpy (CO<sub>2</sub>e).

<sup>15</sup> CO<sub>2</sub>e is a common metric used to evaluate the six constituent gases (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride) and in the case of the GHG Tailoring rule to determine PSD applicability. A source’s GHG emissions are calculated on a CO<sub>2</sub>e basis by multiplying the mass emissions of any of the six GHGs that the source emits by that gas’s global warming potential and then summing the CO<sub>2</sub>e for each GHG emitted by the source. This sum, expressed in terms of tpy CO<sub>2</sub>e, is then compared to the applicable CO<sub>2</sub>e -based permitting threshold to determine whether the source is subject to PSD and title V requirements.

<sup>16</sup> “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plant-wide Applicability Limits,” 77 FR 41051, (July 12, 2012) (the Step 3 GHG Tailoring Rule).

lower the current, 100,000/75,000 applicability thresholds to bring additional sources into the PSD and title V permitting programs (or apply PSD and title V permitting requirements to additional, smaller sources of GHG emissions).<sup>17</sup> See 77 FR 41051.

In the Step 3 GHG Tailoring Rule, EPA also finalized an approach to assist state and local permitting authorities in streamlining the administration of PSD permits for GHGs through the PALs.<sup>18</sup> This approach will improve the usefulness of PALs for GHG emissions by allowing GHG PALs to be established on a CO<sub>2</sub>e basis in addition to the already available mass-basis.<sup>19</sup> EPA also revised its regulations at 40 CFR 52.21 to allow a source that emits or has the potential to emit GHGs at levels above 100,000 tpy CO<sub>2</sub>e but that has emissions of other regulated pollutants at minor source levels (or GHG-only source) to apply for a GHG PAL while still maintaining its minor source status.<sup>20</sup> Florida's December 19, 2013, SIP revision IBR EPA's Step 3 Tailoring Rule related to the GHG PAL permitting regulations. See section IV for EPA's analysis of Florida's SIP submission.

---

<sup>17</sup> Currently, new facilities with GHG emissions of at least 100,000 tpy CO<sub>2</sub>e and existing facilities with at least 100,000 tpy CO<sub>2</sub>e making changes that would increase GHG emissions by at least 75,000 tpy CO<sub>2</sub>e, are required to obtain PSD permits. Facilities that must obtain a PSD permit anyway, to cover other regulated pollutants, must also address GHG emissions increases of 75,000 tpy CO<sub>2</sub>e or more. New and existing sources with GHG emissions above 100,000 tpy CO<sub>2</sub>e must also obtain operating permits.

<sup>18</sup> A PAL is an emissions limit applied source-wide rather than to specific emissions points. With a PAL, a source can make changes to the facility without triggering PSD permitting requirements as long as emissions do not increase above the limit established by the PAL. This allows companies to respond rapidly to changing market conditions while protecting the environment.

<sup>19</sup> Under EPA's interpretation of the Federal PAL provisions, PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. The Step 3 Tailoring Rule revised the PALs regulations and *subject to regulation* provisions at 40 CFR 52.21 to provide GHG sources with the same kind of flexibility sources currently had for other regulated NSR pollutants by allowing sources the option to establish a CO<sub>2</sub>e-based PAL using the CO<sub>2</sub>e-based emission. See 77 FR at 41060.

<sup>20</sup> EPA did not finalize its proposed streamlining measure of providing regulatory authority for the EPA or a delegated agency to issue synthetic minor limitations for GHG in areas subject to a PSD FIP for GHGs or other streamlining measures.

### **III. What is EPA’s Analysis of Florida’s SIP Revision?**

This section summarizes EPA’s analysis of the changes being proposed for inclusion into the Florida SIP. Chapter 62–210, F.A.C. entitled “*Stationary Sources—General Requirements*,” contains definitions of terms (at Rule 62-210.200, F.A.C.) used in Chapter 62–212, F.A.C., as well as other stationary source rules. Chapter 62–210, F.A.C., also establishes general permitting, public notice, reporting, and permit application requirements. Chapter 62–212, F.A.C., entitled “*Stationary Sources—Preconstruction Review*” contains specific preconstruction permitting requirements for various types of air construction permits, including minor source permits, PSD permits, nonattainment new source review (NNSR) permits, and PAL permits. Rule 62–212.400, F.A.C. contains the State’s PSD preconstruction review program as required under part C of title I of the CAA. The PSD program applies to major stationary sources or modifications constructing in areas that are designated as attainment or unclassifiable with respect to the national ambient air quality standards (NAAQS). The current changes to Chapter 62– 210, F.A.C., which EPA is now proposing to approve into the Florida SIP, were submitted to update the existing Florida regulations to be consistent with the regulation of GHG-emitting sources under the Federal PSD permitting program.

#### **A. Florida’s PSD Permitting Program**

Florida's NSR permitting program is based on the application of the term "*PSD pollutant*" at Rule 62-210.200(234), F.A.C. Florida defines "*PSD pollutant*"<sup>21</sup> as any pollutant listed as having a "*significant emission rate*" as defined in Rule 62-210.200. Florida references the term "*PSD pollutant*" within many key NSR definitions in Rule 62-210.200, F.A.C., and its PSD rule, 62-212.400, F.A.C., to trigger program applicability, including: "*Baseline Actual Emissions*," "*Major Modification*," "*Major Stationary Source*," "*Net Emissions Increase*," and "*Projected Actual Emissions*." The applicability of Florida's SIP-approved PSD program depends on whether a new "*major stationary source*" or "*major modification*" of any existing major stationary source will result in significant emissions of a "*PSD pollutant*." The terms "*major stationary source*" and "*major modification*" defined in SIP Rule 62-210.200, F.A.C. references the term "*PSD pollutant*." As mentioned above, Florida indicated in its October 1, 2010, correspondence to EPA that its PSD permitting program was limited to those pollutants identified in the State as a "*PSD pollutant*," a term that does not include GHG. Florida went on to convey that because GHGs were not included in the SIP definition of "*significant emissions rate*," they were not deemed qualified as a "*PSD pollutant(s)*" under Florida's PSD program. Absent a corrective SIP revision, FDEP did not have the authority to apply PSD requirements to

---

<sup>21</sup> Florida adopted into its SIP the term "*PSD pollutant*" (which references significant emissions rate) to replace the term "*NSR Pollutant*" at Rule 62-210.200, F.A.C. as part of its February 3, 2006, SIP submission to adopt the 2002 NSR Reform permitting provisions. See 73 FR 36435 (June 27, 2008). FDEP provided an equivalency demonstration establishing the definitions of "*PSD pollutant*" and "*significant emissions rate*" as being equivalent to the Federal definition of "regulated NSR pollutant" since they included all pollutants for which a NAAQS had been promulgated thus far, all precursors for such pollutants which had thus far been identified by the Administrator, all pollutants subject to standards promulgated under section 111 of the Act, and all pollutants thus far regulated under the Act. Florida's definitions however lacked the catch-all phrase "*subject to regulation*," which is part of the Federal definition of "regulated NSR pollutant." Florida explained that any pollutant or precursor that needed to be identified as a PSD pollutant in the future, if a new pollutant became "*subject to regulation*," would be adopted into the SIP soon after it became regulated.

GHG emitting sources as they became “*subject to regulation*” under the CAA on January 2, 2011. Florida did not make its December 22, 2010, GHG corrective SIP revision deadline resulting in EPA issuing a finding of failure to submit on December 29, 2010, and the GHG PSD FIP on December 30, 2010, to ensure that GHG-emitting sources in Florida would have an available permitting authority (i.e., EPA).

## **B. Florida’s Revision to PSD pollutant**

Under EPA’s PSD program, “*regulated NSR pollutant*” is defined as several categories of pollutants (including, in general, NAAQS pollutants and precursors, pollutants regulated under CAA section 111 New Source Performance Standards, Class I or II substances regulated under title VI of the CAA) and a catch-all category, “[a]ny pollutant that otherwise is “*subject to regulation*” under the Act.” *E.g.*, 40 CFR 52.21(b)(50)(iv). As part of the mechanism to implement the GHG tailoring approach for PSD, EPA promulgated a definition for this catch-all phrase “*subject to regulation*”<sup>22</sup> in the GHG Tailoring Rule as found within “*regulated NSR pollutant*” (which in turn is part of EPA’s definition for “*major stationary source*” and “*major modification*,” central to PSD applicability). Therefore, the term “*subject to regulation*” as referenced in the definition of “*regulated NSR pollutant*” at 40 C.F.R. 52.21(b)(50)(iv) triggers the circumstances under which GHGs are a “*regulated NSR pollutant*.” In addition to defining “*subject to regulation*” for the PSD program, the GHG Tailoring Rule revised the term

---

<sup>22</sup> EPA defined the phrase “*subject to regulation*” so that the GHGs emitted by sources that fall below the thresholds or scope established in Steps 1 and 2 are not treated as “*subject to regulation*,” and therefore do not trigger PSD for the sources that emit them.

“*regulated NSR pollutant*” at (40 CFR 52.21(b)(50)) to reference “*subject to regulation*” at 40 CFR. 52.21(b)(49); and define (at 40 CFR 51.166 and 52.21) the terms “greenhouse gases,” and “tpy CO<sub>2</sub> equivalent emissions.” The 2010 rule also specified the methodology for calculating an emissions increase for GHG, the applicable thresholds for GHG emissions subject to PSD and the schedule for when the applicability thresholds would take effect. *See* 75 FR at 31606-31607.

Florida’s December 19, 2013, SIP submission revises the definition of “*PSD pollutant*” at 62-210.200 to incorporate the term “*regulated NSR pollutant*” as defined in 40 CFR 52.21(b)(50), which in turn references the term “*subject to regulation*” (defined at 40 CFR 52.21(b)(49)) at 40 CFR 52.21(b)(50)(iv). This SIP revision became effective on October 23, 2013. Florida’s revision triggers the circumstances under which GHGs are a “*PSD pollutant*” under the State’s PSD program. In relevant part, Florida’s revised definition of “*PSD pollutant*” provides:

*62-210.200 – PSD pollutant - (a) Any pollutant listed as having a significant emission rate as defined in Rule 62-210.200, F.A.C.; and*

*(b) Any Regulated NSR Pollutant as defined at 40 CFR 52.21(b)(50) and as adopted and incorporated by reference at Rule 62-204.800, F.A.C..*

### **C. Incorporation by Reference**

As Florida mentions in its December 19, 2013, SIP submission, its amendment to “*PSD pollutant*” to IBR the phrase “Any Regulated NSR Pollutant” as defined at 40 CFR 52.21(b)(50) does not, in and of itself, provide Florida the authority to regulate GHGs in its PSD program. Florida’s State Rule 62-204.800, F.A.C., IBR the Federal Code of Federal Regulations (CFR)



(including 40 CFR 52.21) into the Florida regulations.<sup>23</sup> To “activate” the applicability of a Federal rule within Florida’s regulations, the state references Rule 62-204.800, F.A.C. within the state regulations (such as 62-210.200).<sup>24</sup> The previous IBR of Federal provisions at 40 CFR 52.21 into State Rule 62-204.800, F.A.C. predated EPA’s adoption of the GHG Tailoring Rule and the Step 3 GHG Tailoring Rule. In order for the IBR of EPA’s updated definition of “Any Regulated NSR Pollutant” at 40 CFR 52.21(b)(50) to be applicable in Florida’s regulations, FDEP amended State Rule 62.204.800, F.A.C., to IBR 40 CFR 52.21, Subpart A as of July 1, 2011, and July 12, 2012. This amendment to Rule 62-204.800 became state effective on December 17, 2013.<sup>25</sup> This change incorporates into the F.A.C. the applicable GHG regulations established in the GHG Tailoring Rule and the Step 3 GHG Tailoring Rule. Therefore, Florida’s amendment to the definition of “*PSD pollutant*” at Rule 62-210.200, F.A.C., provides Florida the authority to regulate GHG under the PSD program and establishes in the Florida SIP the thresholds for GHG permitting. These changes also IBR the GHG PAL provisions established in the July 12, 2012, Step 3 GHG Tailoring Rule allowing GHG PALs to be established on a CO<sub>2</sub>e

---

<sup>23</sup> When FDEP incorporates by reference a Federal regulation, any subsequent change to the Federal CFR is not automatically incorporated into Florida’s rules. See Section 120.54(1)(i)1., F.S. (“A rule may incorporate material by reference but only as the material exists on the date the rule is adopted.”).

<sup>24</sup> The incorporation by reference of the CFR (such as 40 CFR 52.21) at 62.204.800 does not by itself make those regulations applicable within Florida’s SIP regulations; it’s the actual reference to State Rule 62.204.800 within Florida regulations that makes the Federal regulation applicable. In other words, Rule 62-204.800, F.A.C., is the mechanism Florida uses to make specific Federal requirement applicable within SIP-approved regulations.

<sup>25</sup> Florida’s Rule 62-204.800, F.A.C., is a state law. Therefore the amendment to update the IBR date for 40 CFR 52.21 at 62-204.800 is not part of the State’s December 19, 2013, SIP revision. However, as noted, without it the reference to 40 C.F.R. 52.21(b)(50) in the definition of “*PSD pollutant*” would be referring to an older version of 40 CFR 52.21 which did not include the GHG Tailoring Rule’s regulatory amendments for regulated NSR pollutant and the inclusion of “*subject to regulation*”(nor the Step 3 GHG Tailoring Rule)

basis in addition to the already available mass-basis and allow a GHG-only source to apply for a GHG PAL while still maintaining its minor source status.<sup>26</sup>

#### **D. GHG PSD Permit Transition**

As explained in today's proposed notice, Florida is subject to the FIP for PSD permitting of GHG emissions. EPA remains the sole PSD permitting authority for GHG-emitting sources in Florida until EPA finalizes its proposed approval of the December 19, 2013, SIP revision into the Florida SIP. EPA proposes that upon finalization of Florida's GHG SIP revision, EPA will rescind the GHG PSD FIP for Florida at 40 CFR 52.37.

As part of Florida's December 19, 2013, SIP revision, Florida included a GHG PSD Permit Transition Plan. *See* GHG Transition Plan in Appendix B of Florida's December 19, 2013, submission in the Docket for today's proposed rulemaking using Docket ID: EPA-R04-OAR-2013-0760. Specifically, under FDEP's Permit Transition Plan, FDEP would exercise its authority to administer and enforce GHG PSD permits issued by EPA under its FIP to sources located in the State of Florida. This would include authority for the general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits including, but not limited to, modifications, amendments, or revisions of any nature, and the authority to enforce such permits. Pursuant to the criteria under section 110(a)(2)(E)(i) of the CAA, we have determined that Florida has the authority, personnel, and funding to implement the PSD program for GHGs for existing EPA-issued permits. Therefore,

---

<sup>26</sup> EPA adopted the PAL regulations into the Florida SIP on June 27, 2008, at Rule 62-212.720, F.A.C., as part of the State's February 3, 2006, SIP submission to adopt the 2002 NSR Reform permitting provisions. *See* 73 FR 36435.

EPA proposes that concurrent with EPA's approval of Florida's GHG PSD program into the SIP, EPA will transfer existing EPA-issued GHG permits for Florida sources to FDEP for administration and enforcement. To date, EPA has issued two final PSD permits and has five pending PSD applications in various stages of processing. *See* Appendix B, Attachment 2 of Florida's December 19, 2013, SIP revision.<sup>27</sup> EPA will provide a list of all EPA-issued permits and a copy of each permit record (if requested) to FDEP prior to the effective date of the final SIP approval.

In order to promote an orderly transition of the GHG PSD program from the EPA to Florida, the efficient use of Florida's and EPA's resources, and certainty for the regulated community and the public, and consistent with FDEP's proposed GHG PSD permit transition plan, EPA proposes to retain PSD permit implementation authority (under 40 CFR 52.21) for pending applications, draft permits, and final permits for which final agency action has not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR 124 (including any associated remand actions) have not been completed by the effective date of EPA's final action to approve FDEP's SIP submittal. FDEP would assume full responsibility for the administration and implementation of such GHG PSD permits immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application. Applicants with pending GHG PSD permit applications before EPA, including those for which EPA has proposed draft permits or issued final permits that have not yet become effective or have not yet completed

---

<sup>27</sup> Since the date of Florida's GHG Permit Transition Plan, EPA Region 4 issued a second GHG permit on December 18, 2013 for a total of two GHG issued permits.

the appeals processes pursuant to 40 CFR 124, may elect to withdraw their applications from EPA and resubmit to FDEP for review and processing. Upon the effective date of EPA's final action to approve the SIP submittal, FDEP will immediately assume full responsibility for new GHG PSD applications for Florida sources. As such, new applications will be submitted to and processed by FDEP's Division of Air Resource Management.

#### **IV. Proposed Actions**

Florida's December 19, 2013, SIP submission amends the State's definition of "*PSD pollutant*" to provide Florida with the authority to regulate GHG under its PSD program, to establish PSD applicability thresholds for GHG emissions at the same emissions thresholds and in the same timeframes as those specified by EPA in the GHG Tailoring Rule, and to provide for the implementation of GHG PALs on a CO<sub>2</sub>e basis. In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Florida SIP.<sup>28</sup>

In addition, EPA is proposing that upon finalization of Florida's GHG SIP revision, EPA will rescind the Florida GHG FIP at 40 CFR 52.37. EPA notes that finalization of this portion of today's proposal may follow our finalized approval of the SIP revisions via a separate Administrator-signed action. EPA remains the sole PSD permitting authority for GHG-emitting sources in Florida until EPA finalizes its proposed approval of the December 19, 2013, SIP revision into the Florida SIP.

---

<sup>28</sup> The GHG Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Florida's title V program.

EPA's approval of Florida's December 19, 2013, SIP revision includes approval of FDEP's GHG PSD Permit Transition Plan, under which EPA will transfer existing EPA-issued GHG permits for Florida sources to Florida for administration and enforcement. EPA proposes to retain PSD permit implementation authority (under 40 CFR 52.21) for pending GHG permit applications, draft permits, and final permits for which final agency action has not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR 124 (including any associated remand actions) have not been completed by the effective date of EPA's final action to approve Florida's SIP submittal. Florida would assume full responsibility for the administration and implementation of such GHG PSD permits immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application.

EPA has made the preliminary determination that Florida's December 19, 2013, SIP revision is consistent with EPA's PSD regulations for GHG-emitting sources as promulgated in the GHG Tailoring Rule, Step 3 GHG Tailoring Rule and section 110 of the CAA. Therefore, EPA is proposing to approve the GHG PSD permitting revision into the Florida SIP.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve

state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- are not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Greenhouse Gas, Intergovernmental relations,  
Reporting and recordkeeping requirements

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2013

A. Stanley Meiburg  
Acting Regional Administrator,  
Region 4.

**[FR Doc. 2014-00041 Filed 01/06/2014 at 8:45 am; Publication Date: 01/07/2014]**